

**PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT  
DESIGNATING THE U.S. ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number  
(Optional)  
UNVN.115325

First Named Inventor: Khalid Sayood, et al.

International (PCT) Application No.: PCT/US 04/19762

U.S. Application No.:  
(if known)

10/561,889

Filed: June 21, 2004

Title:  
System and Method for Sequence Distance Measure for  
Phylogenetic Tree Construction

Attention: PCT Legal Staff  
Mail Stop PCT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

The above-identified application became abandoned as to the United States because the fees and documents required by 35 U.S.C. 371(c) were not filed prior to the expiration of the time set in 37 CFR 1.495(b) or (c) as applicable. The date of abandonment is the day after the date on which the 35 U.S.C. 371(c) requirements were due. See 37 CFR 1.495(h).

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee
- (2) Proper reply
- (3) Terminal disclaimer with disclaimer fee which is required for all international applications having an international filing date before June 8, 1995; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

Small entity - fee \$ 750 (37 CFR 1.17(m)). Applicant claims small entity status.  
See 37 CFR 1.27.

Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

**2. Proper reply**

A. The proper reply (the missing 35 U.S.C. 371(c) requirement(s) in the form of transmittal letter, national fee, search fee and examination fee (identify type of reply):

3 FEB 2006

has been filed previously on December 19, 2005 (received December 21, 2005)

Legal Staff  
International Division

is enclosed herewith.

02/02/2006 LLANDGRA 00000036 10561889

01 FC:2453

750.00 DP

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**RECEIVED**

## 3. Terminal disclaimer with disclaimer fee

Since this international application has an international filing date on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

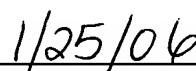
## 4. Statement. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.



Signature



Date

Jean M. Dickman

Typed or Printed Name

48,538

Registration Number, if applicable

Shook, Hardy &amp; Bacon L.L.P., 2555 Grand Blvd., Kansas City, MO 64108

Address

816.474.6550

Telephone Number

Address

Enclosures:  Response Fee Payment Terminal Disclaimer Other (please identify):

Letter, copies of transmittal letter, fees, return card.

<b>TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) CONCERNING A SUBMISSION UNDER 35 U.S.C. 371</b>		ATTORNEY'S DOCKET NUMBER UNVN.115325
INTERNATIONAL APPLICATION NO. PCT/US 04/19762	INTERNATIONAL FILING DATE 6/21/2004	U.S. APPLICATION NO. (If known) <sup>see 37 CFR 1.5</sup>
<b>TITLE OF INVENTION</b> <b>System and Method for Sequence Distance Measure for Phylogenetic Tree Construction</b>		
<b>APPLICANT(S) FOR DO/EO/US</b> <b>Board of Regents of University of Nebraska</b>		
Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:		
<ol style="list-style-type: none"> <li><input checked="" type="checkbox"/> This is a <b>FIRST</b> submission of items concerning a submission under 35 U.S.C. 371.</li> <li><input type="checkbox"/> This is a <b>SECOND</b> or <b>SUBSEQUENT</b> submission of items concerning a submission under 35 U.S.C. 371.</li> <li><input type="checkbox"/> This is an express request to begin national examination procedures (35 U.S.C. 371(f)). The submission must include items (5), (6), (9) and (21) indicated below.</li> <li><input type="checkbox"/> The US has been elected (Article 31).</li> <li><input checked="" type="checkbox"/> A copy of the International Application as filed (35 U.S.C. 371(c)(2))             <ol style="list-style-type: none"> <li><input type="checkbox"/> is attached hereto (required only if not communicated by the International Bureau).</li> <li><input checked="" type="checkbox"/> has been communicated by the International Bureau.</li> <li><input type="checkbox"/> is not required, as the application was filed in the United States Receiving Office (RO/US).</li> </ol> </li> <li><input type="checkbox"/> An English language translation of the International Application as filed (35 U.S.C. 371(c)(2)).             <ol style="list-style-type: none"> <li><input type="checkbox"/> is attached hereto.</li> <li><input type="checkbox"/> has been previously submitted under 35 U.S.C. 154(d)(4).</li> </ol> </li> <li><input type="checkbox"/> Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. 371(c)(3))             <ol style="list-style-type: none"> <li><input type="checkbox"/> are attached hereto (required only if not communicated by the International Bureau).</li> <li><input type="checkbox"/> have been communicated by the International Bureau.</li> <li><input type="checkbox"/> have not been made; however, the time limit for making such amendments has NOT expired.</li> <li><input type="checkbox"/> have not been made and will not be made.</li> </ol> </li> <li><input type="checkbox"/> An English language translation of the amendments to the claims under PCT Article 19 (35 U.S.C. 371(c)(3)).</li> <li><input type="checkbox"/> An oath or declaration of the inventor(s) (35 U.S.C. 371(c)(4)).</li> <li><input type="checkbox"/> An English language translation of the annexes of the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371(c)(5)).</li> </ol> <p><b>Items 11 to 20 below concern document(s) or information included:</b></p> <ol style="list-style-type: none"> <li><input checked="" type="checkbox"/> An Information Disclosure Statement under 37 CFR 1.97 and 1.98.</li> <li><input checked="" type="checkbox"/> An assignment document for recording. A separate cover sheet in compliance with 37 CFR 3.28 and 3.31 is included.</li> <li><input type="checkbox"/> A preliminary amendment.</li> <li><input type="checkbox"/> An Application Data Sheet under 37 CFR 1.76.</li> <li><input type="checkbox"/> A substitute specification.</li> <li><input type="checkbox"/> A power of attorney and/or change of address letter.</li> <li><input type="checkbox"/> A computer-readable form of the sequence listing in accordance with PCT Rule 13ter.2 and 37 CFR 1.821-1.825.</li> <li><input type="checkbox"/> A second copy of the published International Application under 35 U.S.C. 154(d)(4).</li> <li><input type="checkbox"/> A second copy of the English language translation of the international application under 35 U.S.C. 154(d)(4).</li> </ol>		

*EXHIBIT A*

U.S. APP <sup>TM</sup>	INTERNATIONAL APPLICATION NO.		ATTORNEY'S DOCKET NUMBER																																																																																																																																								
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<p>The following fees have been submitted</p> <table border="1"> <tr> <td colspan="2">21. <input checked="" type="checkbox"/> Basic national fee (37 CFR 1.492(a)).....</td> <td>\$300</td> <td>CALCULATIONS</td> <td>PTO USE ONLY</td> </tr> <tr> <td colspan="2">22. <input checked="" type="checkbox"/> Examination fee (37 CFR 1.492(c))</td> <td>\$200</td> <td></td> <td></td> </tr> <tr> <td colspan="2">If the written opinion prepared by ISA/US or the international preliminary examination report prepared by IPEA/US indicates all claims satisfy provisions of PCT Article 33(1)-(4).....</td> <td>\$0</td> <td></td> <td></td> </tr> <tr> <td colspan="2">All other situations.....</td> <td>\$200</td> <td></td> <td></td> </tr> <tr> <td colspan="2">23. <input checked="" type="checkbox"/> Search fee (37 CFR 1.492(b))</td> <td>\$500</td> <td></td> <td></td> </tr> <tr> <td colspan="2">If the written opinion of the ISA/US or the International preliminary examination report prepared by IPEA/US indicates all claims satisfy provisions of PCT Article 33(1)-(4).....</td> <td>\$0</td> <td></td> <td></td> </tr> <tr> <td colspan="2">Search fee (37 CFR 1.445(a)(2)) has been paid on the international application to the USPTO as an International Searching Authority.....</td> <td>\$100</td> <td></td> <td></td> </tr> <tr> <td colspan="2">International Search Report prepared by an ISA other than the US and provided to the Office or previously communicated to the US by the IB.....</td> <td>\$400</td> <td></td> <td></td> </tr> <tr> <td colspan="2">All other situations.....</td> <td>\$500</td> <td></td> <td></td> </tr> <tr> <td colspan="2"><b>TOTAL OF 21, 22 and 23 =</b></td> <td>1,000</td> <td></td> <td></td> </tr> <tr> <td colspan="2"><input checked="" type="checkbox"/> Additional fee for specification and drawings filed in paper over 100 sheets (excluding sequence listing in compliance with 37 CFR 1.821(c) or (e) or computer program listing in an electronic medium) (37 CFR 1.492(j)). The fee is \$250 for each additional 50 sheets of paper or fraction thereof.</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total Sheets</td> <td>Extra Sheets</td> <td>Number of each additional 50 or fraction thereof (round up to a whole number)</td> <td>RATE</td> <td></td> </tr> <tr> <td>44 - 100 =</td> <td>/50 =</td> <td></td> <td>x \$250</td> <td>\$ 0</td> </tr> <tr> <td colspan="2">Surcharge of \$130.00 for furnishing any of the search fee, examination fee, or the oath or declaration after the date of commencement of the national stage (37 CFR 1.492(h)).</td> <td></td> <td></td> <td></td> </tr> <tr> <td>CLAIMS</td> <td>NUMBER FILED</td> <td>NUMBER EXTRA</td> <td>RATE</td> <td>\$</td> </tr> <tr> <td>Total claims</td> <td>23 - 20 =</td> <td>3</td> <td>x \$ 50</td> <td>\$ 150</td> </tr> <tr> <td>Independent claims</td> <td>4 - 3 =</td> <td>1</td> <td>x \$200</td> <td>\$ 200</td> </tr> <tr> <td colspan="2">MULTIPLE DEPENDENT CLAIM(S) (if applicable)</td> <td></td> <td>+ \$360</td> <td>\$</td> </tr> <tr> <td colspan="2"></td> <td colspan="2"><b>TOTAL OF ABOVE CALCULATIONS =</b></td> <td>\$ 350</td> </tr> <tr> <td colspan="2"><input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27. Fees above are reduced by 1/2.</td> <td colspan="2">(\$1,350)</td> <td></td> </tr> <tr> <td colspan="2"></td> <td colspan="2"><b>SUBTOTAL =</b></td> <td>\$ 675</td> </tr> <tr> <td colspan="2">Processing fee of \$130.00 for furnishing the English translation later than 30 months from the earliest claimed priority date (37 CFR 1.492(l)).</td> <td colspan="2">+</td> <td>\$</td> </tr> <tr> <td colspan="2"></td> <td colspan="2"><b>TOTAL NATIONAL FEE =</b></td> <td>\$ 675</td> </tr> <tr> <td colspan="2">Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31). \$40.00 per property</td> <td colspan="2">+</td> <td>\$</td> </tr> <tr> <td colspan="2"></td> <td colspan="2"><b>TOTAL FEES ENCLOSED =</b></td> <td>\$ 675</td> </tr> <tr> <td colspan="2"></td> <td colspan="2">Amount to be refunded:</td> <td>\$</td> </tr> <tr> <td colspan="2"></td> <td colspan="2">Amount to be charged</td> <td>\$</td> </tr> </table>					21. <input checked="" type="checkbox"/> Basic national fee (37 CFR 1.492(a)).....		\$300	CALCULATIONS	PTO USE ONLY	22. <input checked="" type="checkbox"/> Examination fee (37 CFR 1.492(c))		\$200			If the written opinion prepared by ISA/US or the international preliminary examination report prepared by IPEA/US indicates all claims satisfy provisions of PCT Article 33(1)-(4).....		\$0			All other situations.....		\$200			23. <input checked="" type="checkbox"/> Search fee (37 CFR 1.492(b))		\$500			If the written opinion of the ISA/US or the International preliminary examination report prepared by IPEA/US indicates all claims satisfy provisions of PCT Article 33(1)-(4).....		\$0			Search fee (37 CFR 1.445(a)(2)) has been paid on the international application to the USPTO as an International Searching Authority.....		\$100			International Search Report prepared by an ISA other than the US and provided to the Office or previously communicated to the US by the IB.....		\$400			All other situations.....		\$500			<b>TOTAL OF 21, 22 and 23 =</b>		1,000			<input checked="" type="checkbox"/> Additional fee for specification and drawings filed in paper over 100 sheets (excluding sequence listing in compliance with 37 CFR 1.821(c) or (e) or computer program listing in an electronic medium) (37 CFR 1.492(j)). 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(\$1,350)					<b>SUBTOTAL =</b>		\$ 675	Processing fee of \$130.00 for furnishing the English translation later than 30 months from the earliest claimed priority date (37 CFR 1.492(l)).		+		\$			<b>TOTAL NATIONAL FEE =</b>		\$ 675	Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31). \$40.00 per property		+		\$			<b>TOTAL FEES ENCLOSED =</b>		\$ 675			Amount to be refunded:		\$			Amount to be charged		\$
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A check in the amount of \$ 675 to cover the above fees is enclosed.

Please charge my Deposit Account No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ to cover the above fees.  
A duplicate copy of this sheet is enclosed.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 19-2112. A duplicate copy of this sheet is enclosed.

Fees are to be charged to a credit card. **WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**NOTE: Where an appropriate time limit under 37 CFR 1.495 has not been met, a petition to revive (37 CFR 1.137(a) or (b)) must be filed and granted to restore the International Application to pending status.**

SEND ALL CORRESPONDENCE TO:

Customer No. 05251  
SHOOK, HARDY & BACON L.L.P.  
2555 Grand Blvd.  
Kansas City, MO 64108

  
\_\_\_\_\_  
SIGNATURE  
Jean M. Dickman  
\_\_\_\_\_  
NAME  
\_\_\_\_\_  
48,538  
\_\_\_\_\_  
REGISTRATION NUMBER

SHOOK, HARDY & BACON

DETACH AND RETAIN THIS STATEMENT  
THE ATTACHED CHECK IS IN PAYMENT OF  
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY

DESCRIBED BELOW  
NO RECEIPT DESIRED

Check # 590722

Check Date: 12-19-05 Payee: Commissioner of Patents a

Inv. Date Inv. No.  
12-19-05 1837447

Amount Client/Matter  
\$675.00 UNVN.115325

IAP20 Rec'd PTO 25 JAN 2006

Check Total

\$675.00

Name Board of Regents of Univ. of Neb.  
Ser/Reg/Pat No. \_\_\_\_\_  
Filed/Issued \_\_\_\_\_  
Title/Mark System & Method  
for Sequence Distance Measure  
for Phylogenetic Tree Construction  
UNVN File No. 115325  
Initials: NLM Mailed 12-19-05  
Express Mail No. \_\_\_\_\_

**STAMP DATE AND RETURN**

Patent Appln  TM Appln  
if patent application  
 35 # Pgs Specif/Claims/Abstract  
 23 # Claims  
 9 # Drawing Sheets  
 Declaration  
 IDS w/Form 1449  
 Non-Publication Request  
 Extension of Time  
 Amendment  Response  
 Formal Dwgs  Issue Fee  
 Assignment w/cover sheet  
 Maintenance Fee  
 Stmt of use/  Ext of Time  
 8&15 Renewal Appln  
 Check \$ 675  
 Other RC

PTO/1390

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK.

HOLD AT AN ANGLE TO VIEW. DO NOT CASH IF NOT PRESENT.

LAW OFFICES

SHOOK, HARDY & BACON L.L.P.

1525 GRAND BOULEVARD  
KANSAS CITY, MISSOURI 64108-2613  
(816) 474-6550

590722

DATE 12-19-05

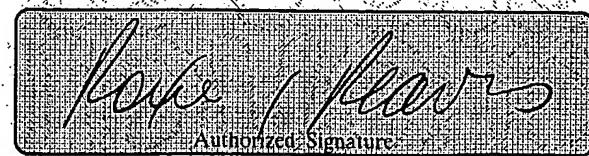


AMOUNT

\*\*\*\*\*\$675.00

PAY TO THE  
Commissioner of Patents and Trademarks

ORDER OF



Authorized Signature

590722 1010001871 5240002781

# EXHIBIT B

IAP20 REC'D PCT/PTO 25 JAN 2006

Name Board of Regents of Univ. of Neb.  
Ser/Reg/Pat No. \_\_\_\_\_

Filed/Issued \_\_\_\_\_

Title/Marks System & Method  
for Sequence Distance Measure  
for Phylogenetic Tree Construction

UNIV File No. 115325

Initials: VM Mailed 12-19-05

Express Mail No. \_\_\_\_\_

## STAMP DATE AND RETURN

**10/561889**

Patent Appln  TM Appln  
if patent application  
35 # Pgs Specif/Claims/Abstract  
23 # Claims  
9 # Drawing Sheets  
Declaration  
 IDS w/Form 1449  
Non-Publication Request  
Extension of Time  
Amendment  Response  
Formal Dwgs  Issue Fee  
Assignment w/cover sheet  
Maintenance Fee  
Stmt of use/  Ext. of Time  
8&15  Renewal Appln  
 Check \$ 675  
 Other RC  
PTO/1390

IAP4 Rec'd PCT/PTO 21 DEC 2005

IAP20060125 25 JAN 2006

Shook,  
Hardy &  
Bacon, L.L.P.  
www.shb.com

January 25, 2006

EV369941845US

Attention: PCT Legal Staff  
Mail Stop PCT  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Jean M. Dickman

2555 Grand Blvd.  
Kansas City  
Missouri 64108-2613  
816.474.6550  
816.559.2179 DD  
816.421.5547 Fax  
jdickman@shb.com

Dear Sir:

I, Jean Dickman, hereby declare as follows:

1. I am a registered Patent Attorney with the United States Patent and Trademark Office.
2. PCT Application No. PCT/US 04/19762 was filed on June 21, 2004.
3. PCT Application No. PCT/US 04/19762 designated the United States.
4. The deadline for entering national phase in the United States was December 19, 2005.
5. The transmittal letter concerning a submission under 35 U.S.C. 371 and basic national fee, search fee and examination fee under 37 CFR 1.492(a-c) were placed in regular 1<sup>st</sup> class mail on December 19, 2005. (See Exhibit A).
6. The transmittal letter was received by the United States Patent and Trademark Office on December 21, 2005 and the U.S. National Phase Application No. 10/561,889 was given a filing date of December 21, 2005. (See Exhibit B).
7. Due to a clerical error, the fee was sent by regular 1<sup>st</sup> class mail on December 19, 2005 when should have been sent by Express Mail on December 19, 2005 to obtain the filing date of December 19, 2005.
8. The entire delay in filing the transmittal letter and required fee for a national phase application under 35 U.S.C. 371 by Express Mail by December 19, 2005 until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.
9. Petition for revival of the United States national phase application based off of PCT application due PCT/US 04/19762 to unintentional delay under 37 CFR 1.137 is respectfully requested.

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Attention: PCT Legal Staff  
January 25, 2006  
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10. It is respectfully requested that U.S. Application No. 10/561,889 be afforded the claim to priority of PCT Application PCT/US 04/19762.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Very truly yours,

Jan M. Dickman

Jean M. Dickman

JMD:nlm  
Enclosures

Geneva  
Houston  
Kansas City  
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Miami  
Orange County  
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Washington, D.C.